

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Billy O'Bryan,

Plaintiff,

v.

EBSCO TeleServices, LLC,

Defendant.

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: Civil Action No.: 1:13-cv-00170
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COMPLAINT

Plaintiff, Billy O'Bryan, by and through his undersigned counsel, states as follows:

INTRODUCTION

1. Plaintiff, Billy O'Bryan ("Plaintiff"), brings this action for damages resulting from the illegal actions of EBSCO TeleServices, LLC ("EBSCO" or "Defendant"). Defendant negligently, knowingly, and/or willfully placed telemarketing calls using a prerecorded voice to Plaintiff, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. *Mims v. Arrow Fin. Serv., LLC*, 132 S.Ct. 740, 751-53 (2012).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff resides within the District of New Hampshire, a substantial portion of the events or omissions giving rise to the case occurred in this District, and Defendant regularly conducts business in this District.

PARTIES

4. Plaintiff is, and at all times mentioned herein was, an adult individual residing in

Somersworth, New Hampshire.

5. Plaintiff has never had a business relationship with EBSCO and never consented to be contacted by EBSCO on his residential telephone.

6. EBSCO is, and at all times mentioned herein was, a Delaware business entity headquartered in Canton, Ohio.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

7. 47 U.S.C. § 227(b)(1)(B) prohibits “any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes”.

8. In addition, a private right of action for “do not call” violations is conferred upon any person who has received “more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed” by the FCC. 47 U.S.C. § 227(c)(5).

9. 47 C.F.R. 64.1200(c)(2) provides that “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.”

ALLEGATIONS APPLICABLE TO ALL COUNTS

10. Plaintiff’s residential phone number is on the national “do not call” list.

11. Beginning in or around November 2012, Defendant repeatedly placed solicitation calls to Plaintiff’s residential telephone.

12. Each of the aforementioned calls was placed using an artificial or prerecorded voice, as prohibited by 47 U.S.C. § 227(b)(1)(B).

13. Defendant did not have prior express consent to place solicitation calls using an artificial or prerecorded voice to Plaintiff on his residential telephone.

14. Defendant's calls to Plaintiff's residential telephone were not for "emergency purposes."

COUNT I
Negligent Violations of the Telephone Consumer Protection Act,
47 U.S.C. § 227, et seq.

15. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

16. Defendant negligently placed multiple solicitation calls to Plaintiff's residential telephone without his prior express consent.

17. Each of the aforementioned calls by Defendant constitutes a negligent violation of the TCPA.

18. As a result of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

19. Additionally, Plaintiff is entitled to and seeks injunctive relief prohibiting such conduct by Defendant in the future.

COUNT II
Knowing and/or Willful Violations of the Telephone Consumer Protection Act,
47 U.S.C. § 227, et seq.

20. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

21. Defendant knowingly and/or willfully placed multiple solicitation calls to Plaintiff's residential telephone without his prior express consent.

22. Each of the aforementioned calls by Defendant constitutes a knowing and/or

willful violation of the TCPA.

23. As a result of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages up to \$1,500.00 for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

24. Additionally, Plaintiff is entitled to and seeks injunctive relief prohibiting such conduct by Defendant in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant Plaintiff the following relief against Defendant:

1. Injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
2. Statutory damages of \$500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
3. Treble damages of up to \$1,500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
4. An award of attorney's fees and costs to counsel for Plaintiff; and
5. Such other relief as the Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: April 12, 2013

Respectfully submitted,

By: /s/ James D. Kelly

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